



9110-04-P

## **DEPARTMENT OF HOMELAND SECURITY**

### **Coast Guard**

#### **33 CFR Part 165**

**[Docket Number USCG-2018-0371]**

**RIN 1625-AA00**

### **Safety Zone; Penn's Landing Fireworks, Delaware River, Philadelphia PA**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to amend the existing recurring fireworks safety zone on the Delaware River adjacent to Penn's Landing in Philadelphia, Pennsylvania. The amendment would allow the Coast Guard to enforce the safety zone at this location throughout the entire year. The Coast Guard would notify the public of upcoming enforcement of the zone through publication of a Notice of Enforcement in the Federal Register and Broadcast Notice to Mariners. This change would expedite public notification of events at the location and ensure the protection of the maritime public and event participants from the hazards associated with fireworks displays in the Delaware River adjacent to Penn's Landing. We invite your comments on this proposed rulemaking.

**DATES:** Comments and related material must be received by the Coast Guard on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** You may submit comments identified by docket number USCG-2018-0371

using the Federal eRulemaking Portal at <http://www.regulations.gov>. See the “Public Participation and Request for Comments” portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:** If you have questions about this proposed rulemaking, call or email Petty Officer Edmund Ofalt, Sector Delaware Bay, Waterways Management Division, U.S. Coast Guard; telephone 215–271–4814, e-mail [Edmund.J.Ofalt@uscg.mil](mailto:Edmund.J.Ofalt@uscg.mil).

## **SUPPLEMENTARY INFORMATION:**

### **I. Table of Abbreviations**

CFR	Code of Federal Regulations
COTP	Captain of the Port
DHS	Department of Homeland Security
FR	<b>Federal Register</b>
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

### **II. Background, Purpose, and Legal Basis**

The Coast Guard routinely receives requests for fireworks displays in the Delaware River Adjacent to Penn’s Landing in Philadelphia, Pennsylvania. As a result, the Coast Guard previously issued a rule creating a recurring safety zone location for this location, listed as entry (a)16 in the table to 33 CFR 165.506. That regulation lists possible days of anticipated enforcement as July 2nd, 3rd, 4th, or 5th; Columbus Day; December 31st, and January 1st. In recent years, however, the number of firework events at this location has significantly increased. To date in the year 2018 there have been 9 requests for fireworks events at this location—many more than the anticipated number of approximately 3 events covered by the current regulation.

The additional requests fall outside the enforcement dates listed in the CFR. As a result, the Coast Guard had to issue numerous temporary safety zones to cover the additional events that fall outside of the coverage of the current regulation. The rules creating these temporary safety zones are generally not preceded by notice of proposed rulemaking due to the short lead-time often provided to the Coast Guard.

The Coast Guard proposes to revise the safety zone for the Penn's Landing location to allow the agency to enforce the safety zone at Penn's Landing anytime from January through December each year during times when a fireworks show is taking place. The purpose of this rulemaking is to ensure the safety of vessels on the navigable waters near the fireworks barge before, during, and after the scheduled event. Hazards from firework displays include accidental discharge of fireworks, dangerous projectiles and falling hot embers or other debris.

The Coast Guard proposes this rulemaking under authority in 33 U.S.C. 1231.

### **III. Discussion of Proposed Rule**

The COTP proposes to revise its recurring fireworks safety zone near Penn's Landing, listed as entry (a)16 in the table to 33 CFR 165.506. Although this safety zone would be January through December each year, enforcement of the safety zone would only be conducted for short periods of time before, during and after fireworks shows at this location. In order to promote clarity, Penn's Landing has been added to the location column of the proposed revised regulatory text. The column defining the boundaries of the regulated area has also been updated to improve clarity and more efficiently define the regulated area. The revised safety zone would cover all navigable waters of the Delaware River within 500 yards of a fireworks barge located at latitude 39° 56' 49" N, longitude 075° 08' 11" W, adjacent to Penn's Landing, Philadelphia,

Pennsylvania.

The requirements of 33 CFR 165.506(a) would still apply. The regulatory text we are proposing appears at the end of this document.

#### **IV. Regulatory Analyses**

We developed this proposed rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders and we discuss First Amendment rights of protestors.

##### **A. Regulatory Planning and Review**

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This NPRM has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the size, location, duration and time of day of the safety zone. Only a small, designated area of the Delaware River will be impacted during enforcement. Consistent with the current regulatory text found in 33 CFR 165.506(d), the default time period this zone will be enforced during each activation is between 5:30 p.m. to 1 a.m. That regulation, however, allows for modifications in this timeframe. In practice, the zone is typically activated with only a two-hour enforcement time period. During the evening, when enforcement is occurring, commercial and recreational traffic is normally low. Notification

of enforcement dates and times will be made, at a minimum, to the maritime community via Notice of Enforcement published in the Federal Register, Broadcast Notice to Mariners, and actual notice will be provided via on-scene enforcement vessels. Notifications will be updated as necessary, to keep the maritime community informed of the status of the safety zone.

### *B. Impact on Small Entities*

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section IV.A above, this proposed rule would not have a significant economic impact on any vessel owner or operator.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and

you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

### C. Collection of Information

This proposed rule would not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

### D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

#### E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### F. Environment

We have analyzed this proposed rule under Department of Homeland Security Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves a safety zone that will only be enforced for a short duration and excludes vessels from entry into or remaining within a specified area on the Delaware River. Normally such actions are categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 01. A preliminary Record of Environmental Consideration supporting this determination is available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

#### G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

## **V. Public Participation and Request for Comments**

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at <http://www.regulations.gov>. If your material cannot be submitted using <http://www.regulations.gov>, contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided. For more about privacy and the docket, visit <http://www.regulations.gov/privacyNotice>.



Documents mentioned in this NPRM as being available in the docket, and all public comments, will be in our online docket at <http://www.regulations.gov> and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

**List of Subjects in 33 CFR Part 165**

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

**PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS**

1. The authority citation for part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

2. Amend § 165.506 by revising entry (a)16 in Table to § 165.506 to read as follows:

**§ 165.506 Safety Zones; Fireworks Displays in the Fifth Coast Guard District.**

\* \* \* \* \*

<b>Table to § 165.506</b>		
<b>(a) Coast Guard Sector Delaware Bay—COTP Zone</b>		
<b>* * * * *</b>		
16 January 1st–December 31st: Any day specified by Notice of Enforcement published in the Federal Register and broadcast via	Penn's Landing, Delaware River, Philadelphia PA; Safety Zone	All waters of Delaware River, adjacent to Penn's Landing, Philadelphia, PA, within 500 yards of a fireworks barge at approximate position latitude

Broadcast Notice to Mariners.		39° 56' 49" N, longitude 075° 08' 11" W.
* * * * *		

Dated: September 18, 2018.

Scott E. Anderson,  
Captain, U.S. Coast Guard,  
Captain of the Port Delaware Bay.

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